

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ANTHONY DUANE MILLS

PLAINTIFF

V.

NO. 5:17-CV-110-DCB-MTP

TRAVIS PATTEN, ET AL.

DEFENDANT

ORDER ADOPTING REPORT AND RECOMMENDATION

This cause is before the Court on Plaintiff Anthony Duane Mills's Complaint pursuant to 42 U.S.C. § 1983 **[Doc. 1]**; and on United States Magistrate Judge Michael T. Parker's Report and Recommendation **[Doc. 64]**, to which no objection was filed by Plaintiff. This Court ADOPTS the Report and Recommendation, and DISMISSES certain claims against all defendants WITH PREJUDICE.

Magistrate Judge Michael T. Parker's Report and Recommendation recommends the following:

(1) that Plaintiff's claims against Matthew Henderson, Henry Frank, IV, Jerry Brown, Stanley Searcy, Jr., and Jackie Dennis be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B); and (2) that the failure to investigate claims against Travis Patten be dismissed. The claims against Patten for excessive force are not addressed by this report and recommendation and remain pending.

The Prison Litigation Reform Act ("PLRA"), 28 U.S.C. 1915(e)(2), applies to prisoner proceedings in forma pauperis and states that the court shall dismiss the case at any time if it determines that the action "is frivolous or malicious; fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). Mills proceeds in forma pauperis (see Doc. 13, p.1), and therefore, the PLRA applies to this action.

Plaintiff Anthony Duane Mills ("Mills") alleges he was raped in March 2016 by Adams County Sheriff Deputy Walter Mackel. Doc. 1. Mills claims that he told various law enforcement officers in Adams County about the rape. Doc. 1. Magistrate Judge Parker conducted a Spears¹ hearing on the issues, where Mills clarified that he sues Defendants Travis Patten, Matthew Henderson, Henry Frank, IV, Jerry Brown, and Stanley Searcy, Jr., for failing to investigate the rape. Doc. 64. However, "failure to investigate or prosecute an offense does not give rise to . . . [Section] 1983 liability." Rolen v. City of Brownfield, Tex., 182 F. App'x 362, 364 (5th Cir. 2006) (citing Piotrowski v. City of Houston, 237 F.3d 567, 582 (5th Cir. 2001)).

Magistrate Judge Parker's Report and Recommendation states that Mills clarified at the hearing that he is suing Jackie Dennis,

¹ Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). The hearing was held February 20, 2018. Doc. 64.

a 911 dispatcher, because another officer answered Mills's 911 call while Jackie Dennis was on a bathroom break. Doc. 64, p.4. The Report and Recommendation states, "Plaintiff has not stated a claim against Jackie Dennis ("Dennis") even with the Court liberally construing his claims. Plaintiff's own testimony and allegations against [Dennis] at the hearing demonstrate this claim against her is frivolous. The claim against her should be dismissed." This Court agrees.

Accordingly,

IT IS ORDERED that Magistrate Judge Michael T. Parker's Report and Recommendation **[Doc. 64]** is ADOPTED as the findings and conclusions of this Court;

FURTHER ORDERED that claims against Defendants Matthew Henderson, Henry Frank, IV, Jerry, Brown, Stanley Searcy, Jr., and Jackie Dennis are DISMISSED WITH PREJUDICE.

FURTHER ORDERED that the failure to investigate claims against Defendant Travis Patten are DISMISSED WITH PREJUDICE. The claims against Defendant Travis Patten for excessive force are not addressed by the Report and Recommendation **[Doc. 64]** and remain pending.

SO ORDERED, this the 3rd day of October, 2018.

/s/David Bramlette
UNITED STATES DISTRICT JUDGE